


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED
FEB 20 2009

CLERK

JAMES H. ARCHAMBAULT,)	CIV. 09-5018-RHB
)	
Petitioner,)	
)	
vs.)	ORDER
)	
DOUGLAS WEBER,)	
Warden, S.D. State Penitentiary,)	
)	
Respondent.)	

Petitioner applied for habeas relief pursuant to 28 U.S.C. § 2241. Docket #1. Because petitioner is a person in custody pursuant to the judgment of a state court, his petition is properly characterized as one arising under 28 U.S.C. § 2254. See Crouch v. Norris, 251 F.3d 720 (8th Cir. 2001). Petitioner's basis for relief is a jurisdictional argument that is identical to the argument raised in a previous habeas action brought by petitioner, CIV. 07-5087. In the previous action, this Court found petitioner's argument to be frivolous and without merit, and accordingly his application was denied. The Eighth Circuit affirmed without comment, by way of denying petitioner's certificate of appealability.

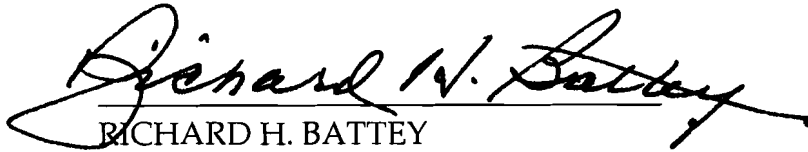
According to 28 U.S.C. § 2244(b)(1), "[a] claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." The claim raised by petitioner in this application is identical to the claim

raised by petitioner in CIV. 07-5087. Thus, the successive petition provision contained in § 2244(b)(1) is triggered. Accordingly, it is hereby

ORDERED that petitioner's application for habeas relief (Docket #1) is dismissed.

Dated this 20th day of February, 2009.

BY THE COURT:


RICHARD H. BATTEY
UNITED STATES DISTRICT JUDGE